

# EXHIBIT A

12:30:14 1 Q. Who actually prepared the text of this  
12:30:16 2 e-mail?

12:30:17 3 A. Mary Anne Tyler.

12:30:32 4 Q. Can you tell me what this e-mail refers to?  
12:30:32 5 What is the \$869,055 Terry Nolan is being directed  
12:30:32 6 to release?

12:30:33 7 A. That's the recouplement to the Commonwealth.

12:30:36 8 Q. And can you explain to me why Terry Nolan is  
12:30:39 9 being instructed to release these funds to Cranberry  
12:30:44 10 Point Nursing Home?

12:30:45 11 A. Yes. As I tried to explain to you, I think  
12:30:49 12 it was a very difficult thing, you might think this  
30:54 13 is odd, but to pay the Commonwealth the money they  
12:30:58 14 were owed, and I think we ultimately worked out an  
12:31:03 15 arrangement after talking to a whole bunch of people  
12:31:06 16 over there. As you can see, it took over a month  
12:31:10 17 from the closing. The original intention at the  
12:31:12 18 closing was simply to either wire the funds or to  
12:31:18 19 get funds over there from Fidelity, but they  
12:31:21 20 wouldn't accept a wire, because for some reason it  
12:31:25 21 would go into the general fund and not into the  
12:31:26 22 Medicaid funds if it was wired, so ultimately we had  
12:31:30 23 to find somebody over there that would agree to  
12:31:33 24 accept a check at some point, and I believe the

12:31:37 1 arrangement -- Frank Barker made an arrangement  
12:31:43 2 with -- through, I guess, Landa's office that  
12:31:43 3 somebody would accept a check if they walked it  
12:31:46 4 over there, and it was on Cranberry's heading, so I  
12:31:51 5 think Andy and I sent a release to Nolan telling him  
12:31:58 6 to give the money to Cranberry, and Cranberry went  
12:32:02 7 over and paid the bill. They had made arrangements  
12:32:05 8 to pay it.

12:32:05 9 Q. So this e-mail is dated November 2 of 2004?

12:32:09 10 A. Looks like it, yes. It took a while to get  
12:32:12 11 it done. It was amazing.

12:32:14 12 Q. I think you had testified earlier that the  
32:16 13 money was going to be given at the closing to  
12:32:19 14 Goodwin, Procter & Hoar, and Goodwin, Procter & Hoar  
12:32:26 15 was to give the funds to the Commonwealth?

12:32:28 16 A. That's right. That was the original  
12:32:30 17 intention.

12:32:30 18 Q. And so was there a check written to Goodwin,  
12:32:35 19 Procter & Hoar at the closing in this amount?

12:32:40 20 A. I think it went -- well, actually, I don't  
12:32:44 21 know. I have to look at a settlement statement. I  
12:33:18 22 think it went to Goodwin. Where is the memo? I  
12:33:18 23 don't see it in there, but I think it was supposed  
12:33:19 24 to go to -- Goodwin was supposed to take it over,

then that didn't work out. We made some calls over, I guess, to Medicaid, and they wouldn't take it, so I think it was deposited with Nolan, as I think back on it, and it was to be released from Nolan to Sucoff. I think there is a memo in these documents you have looked at this morning indicating we weren't to have any say about what happens to it, it was to go to Sucoff to take over when he made arrangements to do it, but then apparently Medicaid wanted our guys to bring it in or something.

Q. So as of the time of this November 2, 2004 e-mail, the money had been sitting with Fidelity since the closing?

A. I think that's right.

Q. And it's your testimony what happened is, per this e-mail, is that Fidelity then cut a check to Cranberry Nursing Home for this amount; is that right?

A. I think they agreed that Frank Barker would take it in and pay it. That was the arrangements made with Medicaid, and to my knowledge it was paid, because there has been no claim against Epoch.

ATTY. HIGGINS: Let mark that as the next exhibit.

35:49 1 (Document marked as Exhibit 68  
12:35:49 2 for identification.)

12:35:50 3 Q. Mr. McCullough, I'm handing you what has  
12:35:52 4 been marked as Exhibit 68. This appears to be a  
12:35:57 5 letter dated November 3, 2004, on your letterhead,  
12:36:02 6 signed by both you and Andy Sucoff; is that right?

12:36:07 7 A. Yes.

12:36:09 8 Q. Is there any reason why, in responding to  
12:36:11 9 your deposition subpoena, we didn't get this letter?

12:36:15 10 A. I don't know that you didn't get it.

12:36:19 11 Q. This obviously would have been a document in  
12:36:21 12 your files, correct?

36:25 13 ATTY. GORDON: There were no documents  
12:36:26 14 produce in response to the deposition subpoena.

12:36:31 15 ATTY. HIGGINS: I understand that, and  
12:36:33 16 my question is why not, why didn't we get this in  
12:36:36 17 response to the subpoena.

12:36:37 18 ATTY. GORDON: Because there was an  
12:36:38 19 objection from the witness to producing documents.

12:36:44 20 Q. Mr. McCullough, this document that we have  
12:36:46 21 just marked as Exhibit 68, is there a copy of this  
12:36:49 22 document in your files?

12:36:53 23 A. I would think there probably is.

12:36:55 24 Q. Is it your practice to maintain copies of

correspondence?

A. This document, yes, I would say.

ATTY. HIGGINS: What was the basis for the objection to producing documents responsive to the subpoena? I don't know if I should direct this to Mr. McCullough or his attorney. I think you said the witness made an objection.

ATTY. GORDON: Well, I, as his counsel, made an objection on his behalf.

ATTY. HIGGINS: Could you just state for the record, because your letter does not so state, what the basis of the objection is?

ATTY. GORDON: No.

ATTY. HIGGINS: No?

ATTY. GORDON: No.

ATTY. HIGGINS: You are refusing to tell me why you objected to producing documents responsive to the subpoena.

ATTY. GORDON: I'm refusing to answer questions at this deposition. Mr. McCullough is the deponent.

Q. Mr. McCullough, you see that this -- if you look at the document that is attached to this November 3 letter.

12:38:13 1 A. Yes.

12:38:13 2 Q. Now this check, which is in the amount of  
12:38:14 3 \$869,055, you see that, it is a Fidelity check, do  
12:38:20 4 you see that, and it's got -- somebody has written  
12:38:24 5 canceled across it; do you see that?

12:38:26 6 A. It says Fidelity National Title Insurance  
12:38:28 7 Company?

12:38:28 8 Q. Yes.

12:38:29 9 A. Yes.

12:38:29 10 Q. And somebody has written canceled across it?

12:38:32 11 A. Yes.

12:38:32 12 Q. Is that your handwriting?

12:38:32 13 A. No.

12:38:34 14 Q. You sent this letter to Mr. Nolan, and you  
12:38:46 15 requested that Mr. Nolan release a check in the  
12:38:46 16 amount of \$869,055 made payable to Cranberry Point  
12:38:46 17 Nursing Home, Inc., correct?

12:38:46 18 A. This is a joint letter from Sucoff and  
12:38:48 19 myself.

12:38:50 20 Q. Correct.

12:38:51 21 A. That's correct. I have no idea looking at  
12:38:56 22 this check who it is made out to. It says -- oh, it  
12:38:59 23 says pay to the Commonwealth of Mass.

12:39:01 24 Q. Correct.

12:39:41 1 (Document marked as Exhibit 69  
12:39:41 2 for identification.)

12:39:42 3 Q. Mr. McCullough, I'm handing you Exhibit 69.  
12:39:49 4 The first page of that exhibit is a letter dated  
12:39:52 5 November 4, 2004 to Mary Anne Tyler of your office;  
12:39:56 6 do you see that?

12:39:57 7 A. Yes.

12:39:57 8 Q. The letter is from a woman named Jacquelyn  
12:40:00 9 Byrne at Fidelity National Title Insurance Company  
12:40:03 10 enclosing a check made payable to Cranberry Point  
12:40:06 11 Nursing Home in the amount of \$869,055, correct?

12:40:11 12 A. Yes.

40:11 13 Q. Is this also a letter a copy of which is in  
12:40:13 14 your files?

12:40:18 15 A. I assume it would be, but I don't -- I mean,  
12:40:21 16 I don't have a memory of it.

12:40:30 17 Q. This letter is dated November 4, 2004. Have  
12:40:38 18 you ever had -- strike that. From that date to the  
12:40:55 19 present have you had conversations with anyone at  
12:40:56 20 the Commonwealth of Massachusetts about this  
12:40:59 21 obligation, whether it's been paid, whether it's not  
12:41:01 22 been paid?

12:41:02 23 A. No.

12:41:19 24 Q. Mr. McCullough, are you familiar with an



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entity called Freid and Tobin Venture Partners?

A. No.

Q. To the best of your knowledge did any monies from any of the escrow funds that were established at the closing go back to any member of the Freid family?

A. Which escrows are you talking about?

Q. Any of the escrows that were established at the closing.

A. The Mellon escrows?

Q. Or the Fidelity escrows.

A. No, no monies, to my knowledge, went back to the sellers, or the Freids.

Q. And it's your understanding that the check that is made payable to Cranberry Point, the intent of that check was it was going to be deposited into that -- into a bank account, Cranberry Point bank account, and then a check was going to be written out to the Commonwealth of Massachusetts and then delivered to them?

A. I don't know if this check ultimately was endorsed over to the Commonwealth. Frank Barker had made arrangements with the Medicaid Division to obtain this check, and satisfactory arrangements,

12:42:36 1 that were satisfactory to Sucoff, and Goodwin  
12:42:39 2 Procter, and Epoch in that regard, and they  
12:42:42 3 obviously had had communications with the Medicaid  
12:42:45 4 office also to determine the correct pathway to pay  
12:42:48 5 this bill, and it's my understanding it was paid,  
12:42:51 6 otherwise Epoch would be screaming about it now,  
12:42:54 7 because they would have had their checks reduced.

12:42:59 8 Q. Do you have any understanding as to whether  
12:43:25 9 the current -- as to the current status of the  
12:43:28 10 ownership of the shares in The Pointe Group, Inc.

12:43:36 11 A. The Pointe Group Inc.; not off the top of my  
12:43:39 12 head I don't, no.

43:41 13 Q. How about any of the healthcare -- remaining  
12:43:44 14 healthcare entities that the Freid family is  
12:43:46 15 involved with; do you know whether the shares, in  
12:43:49 16 either the companies that own those entities, or the  
12:43:51 17 operating companies, whether those shares are still  
12:43:55 18 held by Georgia Freid and Mark Tobin?

12:43:59 19 A. I believe that's the case.

12:44:33 20 ATTY. HIGGINS: I don't think I have any  
12:44:34 21 other questions.

12:44:34 22 CROSS EXAMINATION

12:44:41 23 BY ATTY. WORCESTER:

12:44:41 24 Q. Mr. McCullough, my name is Courtney